JONES *v.* ALBERT.

Jan. 13, 1916.

[87 S. E. 564.]

Reformation of Instruments (§ 47*)—Mistake—Recovery of Excess.—Where plaintiff, in exchange for defendant's farm, agreed to convey his own farm with a guaranty that there would be 326 acres after taking off 115 acres more or less to a third party, and there was a mistake in the boundary of the land set off to such third party, whereby the land set apart to him contained only 101 acres instead of 115 acres, but the residue of the farm contained 371 acres or a considerable area above that guarantied, the plaintiff was entitled to a reformation of his deed to defendant so as to take 13 acres from defendant's land immediately adjoining that set apart to the third person, with the option to defendant to retain the land and pay plaintiff its value.

[Ed. Note.—For other cases, see Reformation of Instruments, Cent. Dig. §§ 74, 76, 78; Dec. Dig. § 47.* 9 Va.-W. Va. Enc. Dig. 874.]

Appeal from Circuit Court, Montgomery County.

Bill by J. A. Albert against M. Wiley Jones. Decree for plaintiff, and defendant appeals. Affirmed.

Roop & Phlegar, of Christianburg, and *Johnston & Izard,* of Roanoke, for appellant.

A. P. Staples, Jr., of Lexington, and *A. B. Hunt,* of Roanoke, for appellee.

HOLDSWORTH *v.* ANDERSON DRUG CO.

Jan. 13, 1916.

[87 S. E. 565.]

1. Bills and Notes (§ 491*)—Actions—Pleading—Nil Debet.—At common law, where defendant pleaded nil debet when sued on a note, the burden was on plaintiff to prove that defendant made the note sued on, that the payee indorsed and negotiated it to the plaintiff before maturity for a valuable consideration, that plaintiff was the holder in due course without notice, and that the instrument was still due and unpaid, since the plea puts in issue every material allegation of the declaration or other pleading to which it is interposed.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1643-1648 Dec. Dig. § 491.* 2 Va.-W. Va. Enc. Dig. 489.]

2. Bills and Notes (§ 516*)—Prima Facie Case—Statute—"Holder in Due Course."—Under Negotiable Instruments Law (Code 1904, § 2841a) subsec. 59, providing that every holder is deemed prima facie

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

to be a holder in due course, and subsection 52, defining such holder to be one who has taken the instrument when complete and regular upon its face, before it was overdue, and without notice of any previous dishonor, in good faith, and for value, and without notice of any infirmity in the instrument or defect in the title of the person negotiating it, where defendant, to plaintiff's notice in writing of a motion for judgment on a note, filed a plea in writing denying that plaintiff was a holder for value in due course before maturity, and also a plea of nil debet, the note and its indorsement to plaintiff were not only admissible, but made out a prima facie case for recovery entitling plaintiff to rest until rebuttal evidence was adduced.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1800-1806; Dec. Dig. § 516.* 2 Va.-W. Va. Enc. Dig. 440.

For other definitions, see Words and Phrases, First and Second Series, Holder in Due Course.]

3. Bills and Notes (§ 497*)—Presumption from Holding—Destruction—Statute.—Under Code 1904, § 3279, providing that when a pleading alleges that any person made, indorsed, assigned, or accepted any writing, no proof of the fact shall be required, unless an affidavit be filed with the pleading putting it in issue, denying that such indorsement, etc., was made by the person charged or by one authorized by him, where defendant sued on a note filed a plea, accompanied by his affidavit, denying that plaintiff was holder for value in due course and before maturity of the note, the statutory presumption that the holder of a negotiable instrument is a holder in due course was not destroyed, as the defense contemplated by the statute involves a denial of the making of the writing, etc., by the person charged.

[Ed. Note.—For other cases, see Bills and Notes, Cent. Dig. §§ 1448, 1675-1681, 1683-1987; Dec. Dig. § 497.* 2 Va.-W. Va. Enc. Dig. 493.]

4. Appeal and Error (§ 204*)—Reservation of Grounds of Review—Objection to Evidence.—Where, in a suit on a note, no objection was made below that there was error in the date of the copy of the note offered in evidence, such objection could not be raised for the first time in the appellate court.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 1149, 1258-1272, 1274-1278, 1280, 1569; Dec. Dig. § 204.* 1 Va.-W. Va. Enc. Dig. 539.]

Error to Circuit Court, Prince Edward County.

Motion for judgment by N. H. Holdsworth against S. W. Anderson doing business as the Anderson Drug Company. Judg-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ment for defendant, and plaintiff brings error. Reversed, and cause remanded for new trial.

J. Taylor Thompson, of Farmville, for plaintiff in error.
H. W. Anderson, of Richmond, for defendant in error.

KELLY *v.* KELLY.

Jan. 13, 1916.
[87 S. E. 567.]

1. Judgment (§ 948*)—Foreign Judgment—Conclusiveness of Adjudication—Pleading.—Where defendant sought to rely upon a foreign judgment and pleaded it by setting up in her answer the order, and the record from the court, duly certified was identified and filed, the foreign judgment was sufficiently pleaded.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1787-1793; Dec. Dig. § 948.* 6 Va.-W. Va. Enc. Dig. 221.]

2. Judgment (§ 948*)—Foreign Judgment—Estoppel to Plead.—One who in his answer seeks to rely on a foreign judgment as conclusive does not waive the estoppel of the foreign judgment by pleading to the merits of the cause.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1787-1793; Dec. Dig. § 948.* 4 Va.-W. Va. Enc. Dig. 748.]

3. Divorce (§ 330*)—Judgment (§ 815*)—Foreign Judgment—Conclusiveness.—Under Const. U. S. art. 4, § 1, requiring full faith and credit to be given in each state to the public acts, records, and judicial proceedings of every other state, judgments which are conclusive in the state where pronounced are equally conclusive everywhere in the United States, so that, where Massachusetts courts have decided that a decree of the probate court, adjudging that the wife left the husband for justifiable cause, is a bar to proceedings for divorce on the ground of her desertion, the same rule must be applied in Virginia in the husband's suit for divorce, where his wife had obtained such a decree in Massachusetts.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. § 839; Dec. Dig. § 330; Judgment, Cent. Dig. §§ 1445-1448; Dec. Dig. § 815.* 4 Va.-W. Va. Enc. Dig. 748.]

4. Divorce (§ 326*)—Foreign Judgment—Conclusiveness.—Where the wife left the husband and obtained a judgment of the probate court decreeing that she had left him for justifiable cause, and thereafter in another state he brought suit for divorce on the ground of desertion, it was error to give him a decree as prayed, since that would deny full faith and credit to the courts of the first state, which hold that such a decree is conclusive as to the wife's desertion.

[Ed. Note.—For other cases, see Divorce, Cent. Dig. §§ 827-830, 840; Dec. Dig. § 326.* 6 Va.-W. Va. Enc. Dig. 224.]

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*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.